Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Connect America Fund Developing an Unified Intercarrier Compensation Regime	WC Docket No. 10-90 CC Docket No. 01-92

JOINT REPLY COMMENTS OF KANSAS FIBER NETWORK LLC AND MISSOURI NETWORK ALLIANCE LLC

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TABLE OF CONTENTS

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I. INTRODUCTION AND SUMMARY

Kansas Fiber Network LLC ("KFN") and Missouri Network Alliance LLC ("MNA") operate fiber optic transport networks in Kansas and Missouri, respectively. Owned by independent telephone companies in their serving territories, KFN and MNA also offer competitive tandem switching and transport services to carriers serving rural customers in Kansas and Missouri, respectively.[1] As competitive tandem providers,[2] KFN and MNA have an

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[1] Created in 2009, KFN is owned by 29 independent telephone companies in Kansas. KFN's broadband transport network consists of approximately 3,000 miles of fiber optic cable routes in the state of Kansas, providing broadband and private data services to wholesale and enterprise customers. Owned in part by 13 independent telephone companies in Missouri, MNA was established in 1999 to leverage and combine the fiber optic networks of MNA's member companies in the state. MNA is part of Bluebird Network LLC, which has over 6,000 miles of fiber optic cable routes providing service throughout the Midwest and United States and which owns 50 percent of MNA.

[2] KFN and MNA use the term "competitive tandem provider" to refer to an intermediate carrier that offers tandem switching, tandem transport, and transit services on a competitive basis but that does not: (i) own the end office (either directly or indirectly through an affiliate); or (ii) offer telecommunications services to end users.

interest in this proceeding and respectfully submit these joint reply comments to address issues raised by parties in response to the Commission's *Refresh Notice*.[3]

The Commission should reject calls to transition competitive tandem services to bill-and-keep, which is predicated on a carrier's ability to recover its costs from end users. Because competitive tandem providers do not serve end users, a bill-and-keep regime does not make economic sense and would only result in fewer competitive alternatives. Furthermore, there are legal hurdles to imposing a bill-and-keep methodology on competitive tandem providers, which bill-and-keep advocates do not address.

Rather than extending bill-and-keep to competitive tandem providers, the Commission should adopt targeted reforms to address transport arbitrage practices in which a handful of unscrupulous carriers may be engaged. Specifically, by ensuring the ability of carriers to interconnect directly at the end office and by adopting reasonable mileage caps for transport services, the Commission can eliminate the economic incentives for carriers to inflate mileage or utilize uneconomic transport routes.

Finally, KFN and MNA agree that the Commission should establish rules or at the very least provide guidance on the default location of the network edge, which is essential to determining the financial responsibilities for the routing of traffic. Any decisions regarding the network edge should be fair to all participants, and the Commission should refrain from picking winners and losers in selecting its location, as some commenters propose.

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[3] Public Notice, *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport and Transit*, WC Docket No. 10-90, CC Docket No. 01-92 (Sept. 8, 2017) ("*Refresh Notice*").

II. THE COMMISSION MUST TAKE INTO ACCOUNT ECONOMIC AND LEGAL REALITIES IN CONSIDERING WHETHER TO EXTEND ITS BILL-AND-KEEP REGIME TO COMPETITIVE TANDEM PROVIDERS.

As various commenters correctly point out,[4] the Commission capped the switched access rates of competitive tandem providers six years ago but did not subject competitive tandem providers to the transition plan in the Commission's *USF/ICC Transformation Order*.[5] Although the Commission proposed in its *USF/ICC Transformation Order* to "adopt a bill-and-keep methodology as the end state for all traffic,"[6] there are economic and legal impediments to extending this regime to competitive tandem providers – impediments that proponents of bill-and-keep do not address.[7]

First, the economic underpinnings of bill-and-keep have no applicability to competitive tandem providers that do not serve end users. In proposing bill-and-keep as its default intercarrier compensation mechanism, the Commission expected that a carrier would look "to its *end-users*—which are the entities and individuals making the choice to subscribe to that network—rather than looking to *other carriers* and their customers to pay for the costs of its

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4 *See, e.g.,* Comments of AT&T Services, Inc., WC Docket No. 10-90, CC Docket No. 01-92, at 4, n.3 (filed Oct. 26, 2017) ("AT&T Comments"); Comments of Verizon, WC Docket No. 10-90, CC Docket No. 01-92, at 2-3 (filed Oct. 26, 2017) (noting that only "tandem switching and transport for calls that terminate via a tandem owned by the terminating LEC" "are moving to bill-and-keep" with "[t]he remaining transport rates … remain at 2011 levels") ("Verizon Comments"); Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 10-90, CC Docket No. 01-92, at 13 (filed Oct. 26, 2017) (noting that the Commission's rate transition plan "reduced tandem switching and transport charges only when the terminating price cap carrier also owns the tandem in the serving area") ("ITTA Comments").

5 *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ("*USF/ICC Transformation Order*"), *aff'd sub nom. Direct Commc'ns Cedar Valley LLC v. FCC*, 753 F.3d 1015 (10th Cir. 2014).

6 *USF/ICC Transformation Order*, ¶ 740.

7 *See, e.g.,* Comments of Sprint Corporation, WC Docket No. 10-90, CC Docket No. 01-92, at 1 (filed Oct. 26, 2017) ("Sprint Comments"); Comments of NCTA – The Internet & Television Association, WC Docket No. 10-90, CC Docket No. 01-92, at 4 (filed Oct. 26, 2017) ("NCTA Comments").

network."[8] The Commission repeatedly emphasized a carrier's ability to recover its costs from its end users as the justification for a bill-and-keep regime.[9]

However, a competitive tandem provider cannot recover its costs from end users it does not serve; instead it must seek cost recovery from its carrier customers.[10] Given this economic reality, transitioning the rates of competitive tandem providers to bill-and-keep would be the equivalent of a regulatory death sentence. If denied the ability to recover its costs from its carrier customers, a competitive tandem provider would be left with only two options: first, provide tandem services for free; or, second, get out of the tandem business. Because the first option would be economically irrational, mandating bill-and-keep for all tandem services would inevitably reduce the number of competitive tandem alternatives.[11]

Second, the primary legal authority upon which the Commission relied to establish bill-and-keep as the default compensation arrangement – Section 251(b)(5) – does not extend to

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8 *USF/ICC Transformation Order*, ¶ 737 (emphasis added).

9 *See, e.g., id.* ¶ 742 (finding that bill-and-keep "brings market discipline to intercarrier compensation" by requiring "carriers to recover the cost of their network through end-user charges, which are potentially subject to competition"); *id.* ¶ 745 (concluding that "a bill-and-keep framework helps reveal the true cost of the network to potential subscribers by limiting carriers' ability to recover their own costs from other carriers and their customers …"); *id.* ¶ 746 (rejecting "claims that bill-and-keep does not allow for sufficient cost recovery" because it "merely shifts the responsibility for recovery from other carrier's customers to the customers that chose to purchase service from that network …").

10 *See* Comments of Peerless Network, Inc.; West Telecom Services, LLC; Peninsula Fiber Network, LLC; Alpha Connect, LLC: Rural Telephone Service Company, Inc. d/b/a Nex-Tech; Nex-Tech, LLC; and Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks, WC Docket No. 10-90, CC Docket No. 01-92, at 3 (filed Oct. 26, 2017) ("Carrier Coalition Comments"); Comments of CenturyLink, Inc, WC Docket No. 10-90, CC Docket No. 01-92, at 13 (filed Oct. 26, 2017) ("CenturyLink Comments").

11 Carrier Coalition Comments at 24 (subjecting competitive tandem services to bill-and-keep "would seriously undermine the network investments made by providers of these services, and would likely result in these carriers leaving the market, thereby reducing competition, innovation, investment, and the availability of alternative networks"); CenturyLink Comments at 6 ("It is self-evident that a result where no carriers can obtain compensation for [tandem] services would be inappropriate").

competitive tandem services.[12] Section 251(b)(5) imposes upon local exchange carriers ("LECs") the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[13] As commenters correctly point out, intermediate services such as tandem switching and transport are not subject to Section 251(b)(5) because "by definition intermediate third parties do not 'terminate' traffic."[14]

While the Commission also relied upon its traditional Section 201 rate-setting authority in establishing the current bill-and-keep regime,[15] the Commission consistently has rejected the use of Section 201 to regulate rates in competitive markets.[16] According to the Commission, competition – not regulation – "is the most effective means of ensuring that the charges, practices, classifications, and regulations with respect to [a telecommunications service] are just and reasonable."[17] Here, the record establishes that the tandem services market is robustly

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12 *USF/ICC Transformation Order*, ¶ 772.

13 47 U.S.C. § 251(b)(5).

14 *See, e.g.,* AT&T Comments at 16.

15 *USF/ICC Transformation Order*, ¶¶ 769-771.

16 *See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act,* Second Report & Order, 9 FCC Rcd 1411, ¶ 174 (1994) ("[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates"); *see also id.* ¶ 173 ("in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service ..."); *Orloff v. Vodafone AirTouch Licensees LLC*, 17 FCC Rcd 8987, ¶ 24 (2002) (noting that "the Commission has regulated CMRS though competitive market forces, declining to impose specific cost-based regulations on CMRS providers"), *aff'd Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003); *The Merger of MCI Communications Corporation and British Telecommunications plc*, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd 15351, ¶ 204 (1997) ("competition can protect consumers better than the best-designed and most vigilant regulation").

17 *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance,* Memorandum Opinion and Order, 14 FCC Rcd 16252, ¶ 31 (1999); *see also Comsat Corp.; Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083, ¶ 134 (1998) (noting the Commission's actions "to limit the application of unnecessary regulation where competition would serve as a better regulator").

competitive, which renders inappropriate the Commission regulation of tandem rates under Section 201.[18]

In short, bill-and-keep is ill-suited to competitive tandem services. To the extent that a limited number of tandem providers are engaged in arbitrage activities or otherwise abusive practices (an issue discussed below), the Commission should adopt targeted rules to address such conduct rather than imposing bill-and-keep on the entire tandem industry.

III. IN ADDRESSING THE CONDUCT OF A SMALL NUMBER OF BAD ACTORS, THE COMMISSION SHOULD IMPLEMENT TARGETED REFORMS RATHER THAN EXTENDING BILL-AND-KEEP TO COMPETITIVE TANDEM PROVIDERS.

Several commenters complain that some "unscrupulous carriers" are engaging in "mileage pumping" and other "transport arbitrage" schemes, notwithstanding the Commission's intercarrier compensation reforms.[19] Although neither KFN nor MNA has any insight into the merits of these complaints, the Commission should avoid painting with too broad a brush in addressing such concerns.

The Commission can implement targeted reforms to address "mileage pumping" or "transport arbitrage" schemes, without subjecting competitive tandem providers to bill-and-keep. For example, carriers have the option to interconnect directly at the end offices of KFN and MNA member companies. If carriers can elect direct interconnection at the end office (subject to

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[18] *See, e.g.,* AT&T Comments at 17-19; Carrier Coalition Comments at 2-3 & 25. Although one commenter asserts that "the largest incumbent LECs tend to be" the "only providers" of transit and tandem transport "in many areas," NCTA Comments at 3, it provides no support for this assertion.

[19] AT&T Comments at 9-14 (noting the "incentive for unscrupulous carriers to inflate tandem and transport charges to unreasonable levels"); *see also* Verizon Comments at 6-8 (noting that "one traffic pumping CLEC has inflated its billed transport miles by structuring its operations to use an inefficient 192-mile transport route in South Dakota"); Comments of T-Mobile USA, Inc. WC Docket No. 10-90, CC Docket No. 01-92, at 3 (filed Oct. 26, 2017) (noting that "the industry is plagued with new traffic pumping and robocalling schemes, as well as unacceptably high levels of phantom traffic") ("T-Mobile Comments").

technical feasibility), the transport abuses about which commenters complain would be diminished if not eliminated because carriers could bypass the tandem provider whenever tandem rates are uneconomical or transport routes are inefficient.[20]

Furthermore, both KFN and MNA cap transport mileage under their interstate tariffs, even though the distance of some end offices subtending their tandem switches exceeds the applicable transport mileage cap. Reasonable transport mileage caps would remove the incentive for carriers to engage in transport-based arbitrage schemes because they would not receive additional compensation "by inflating billed transport miles."[21]

IV. THE COMMISSION SHOULD ENSURE THAT ANY RULES REGARDING THE LOCATION OF THE NETWORK EDGE ARE FAIR.

Commenters generally agree that the Commission should establish rules or at the very least provide guidance regarding the location of the network edge, which determines financial

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[20] CenturyLink Comments at 14 (supporting "a rule clarifying that all carriers have the right to determine the most economical manner in which to deliver the traffic to the edge, including the right to directly connect with originating and/or terminating providers …"); Carrier Coalition Comments at 11 (direct interconnection would "stop arbitrage schemes under which certain terminating carriers require traffic to be sent through a designated intermediate carrier partner that imposes charges that the terminating carrier could not impose itself"); *see also* Verizon Comments at 7 (asserting that "access stimulators generally refuse to offer dedicated transport at all or refuse to offer such dedicated transport on reasonable terms"); AT&T Comments at 14 (noting that a carrier engaged in access stimulation "has flatly refused to provide or permit direct connections that would bypass its tandem transport charges").

[21] Verizon Comments at 9. Any transport mileage cap must reasonably approximate the distance involved in transporting calls from a tandem switch to the terminating end offices in the terminating carrier's service territory, which, in rural areas, can be more than 100 miles. Under the circumstances, relying upon the 10-mile transport cap employed by Level 3, which serves urban locations, would not "approximate[] the mileage that would apply if the interexchange carrier could select the most efficient transport routing" in rural areas. *See* Verizon Comments at 10.

responsibility for the delivery of a sending carrier's traffic.[22] However, there is no consensus on where the network edge should be located.

Network edge issues admittedly are "complex" and require that the Commission "balance a number of competing considerations."[23] However, KFN and MNA agree that whatever framework the Commission adopts for the default network edge should be "fair."[24] Fairness requires that default network edge established by the Commission not undermine carrier's ability to offer service or increase artificially a carrier's costs in serving its end users.

Sprint's proposal that the Commission designate existing Internet exchange points ("IXPs") "as the default point for exchange of voice traffic" does not pass muster under this fairness standard.[25] For national wireless carriers and Tier 1 Internet providers, interconnecting at an IXP for the exchange of all traffic may make financial sense. But that would not be true for regional network providers like KFN and MNA or their rural incumbent LEC member companies, which would be required to bear significant costs under Sprint's proposal in handing off traffic from their networks to the nearest IXP located in another state.[26]

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22 Joint Comments of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 10-90, CC Docket No. 01-92, at 20 (filed Oct. 26, 2017) ("NTCA Comments"); T-Mobile Comments at 9-17; ITTA Comments at 5; AT&T Comments at 5-6; Sprint Comments at 4; Carrier Coalition Comments at 8-10.

23 AT&T Comments at 5.

24 Verizon Comments at 12; *see also* AT&T Comments at 6 (the default edge "must fairly apportion responsibility").

25 Sprint Comments at 3.

26 *Id.* at 4 (urging the Commission to "make clear that each network operator is responsible for the costs of establishing connections from its network to the IP POI, including any TDM-IP media gateway conversions, ports on its network edge router, port charges on the carrier hotel switch, and any carrier hotel landlord fees for its collocated equipment, or IP transit costs associated with reaching the IP POI if it does not have its own facilities to the IP POI"); *see* NTCA Comments at 21 (noting that forcing rural LECs "to bear increased costs to transport traffic to the network edge" would "jeopardize[e] their ability to invest and "undermin[e] the Commission's universal service efforts").

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Respectfully submitted,

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